

<input checked="checked" type="checkbox"/> FILED	<input type="checkbox"/> LODGED
<input type="checkbox"/> RECEIVED	<input type="checkbox"/> COPY
JUL 26 2012	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	DEPUTY

1 Daniel Rigmaiden  
Agency # 10966111  
2 CCA-CADC  
PO Box 6300  
3 Florence, AZ 85132  
Telephone: none  
4 Email: none

5 Daniel David Rigmaiden  
Pro Se, Plaintiff

7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF ARIZONA

10 Daniel David Rigmaiden,  
11 Plaintiff,  
12 v.

Civil Action No.:

**CV 12-1605-PHX-SRB-BSB**

13 (1) Federal Bureau of  
14 Investigation,  
15 (2) Executive Office for  
16 United States Attorneys,  
17 (3) Office of Information  
Policy, and  
18 (4) Department of Justice,  
19 Defendants.

21 **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

23 **I. Preliminary Statement**

24 1. This is an action under the Freedom of Information  
25 Act ("FOIA"), 5 U.S.C. 552, and the Federal Declaratory  
26 Judgment Act, 28 U.S.C. 2201 & 2202, seeking the immediate  
27 processing and release of agency records requested by  
28 plaintiff, Daniel David Rigmaiden (hereafter "Plaintiff"), pro

1 se, from defendants (1) the Federal Bureau of Investigation,  
2 (2) the Executive Office for United States Attorneys, (3) the  
3 Office of Information Policy, and (4) the Department of  
4 Justice (hereafter sometimes collectively "Defendants").

5       2. On approximately October 10, 2011, Plaintiff mailed  
6 the Federal Bureau of Investigation and Executive Office for  
7 United States Attorneys separate FOIA requests seeking records  
8 on portable/transportable wireless device locators (i.e.,  
9 devices used to locate cell phones, cell site emulators, etc.)  
10 and related equipment manufactured and/or branded and/or sold  
11 by Harris Wireless Products Group (Harris Corporation) and  
12 other manufacturers/companies. In both requests, plaintiff  
13 requested a waiver of all costs or reduced costs and expedited  
14 processing.

15       3. On approximately November 10, 2011, Plaintiff mailed  
16 the Federal Bureau of Investigation a FOIA request seeking  
17 records relating to (1) comments made by Federal Bureau of  
18 Investigation agents and employees to The Wall Street Journal  
19 reported in or in relation to the September 22, 2011 The Wall  
20 Street Journal article titled "'Stingray' Phone Tracker Fuels  
21 Constitutional Clash," and (2) comments made by Federal Bureau  
22 of Investigation agents and employees at a panel at the  
23 Brookings Institution in May of 2011 regarding  
24 portable/transportable wireless device locators. In the  
25 request, plaintiff requested a waiver of all costs or reduced  
26 costs and expedited processing.

27       4. Plaintiff is entitled to timely release of the  
28 records sought, expedited processing, and full fee waivers.

1 Although it has been more than seven (7) months and more than  
2 eight (8) months since Plaintiff's FOIA requests, Defendants  
3 have since then failed to produce any records in response and,  
4 in two cases, failed to even acknowledge receipt of the  
5 requests. Defendants have also refused to grant Plaintiff  
6 expedited processing and fee waivers. The Office of  
7 Information Policy denied all three of Plaintiff's appeals.

## 8 **II. Jurisdiction and Venue**

9 5. This Court has subject matter jurisdiction over this  
10 action and personal jurisdiction over the parties pursuant to  
11 5 U.S.C. §§ 552(a)(4)(A)(vii), 552(a)(4)(B), 552(a)(6)(C)(i),  
12 and 552(a)(6)(E)(iii). This Court also has jurisdiction over  
13 this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §§  
14 2201(a) & 2202. Venue is proper in this district under 5  
15 U.S.C. § 552(a)(4)(B) considering Plaintiff currently resides  
16 in Florence, AZ.

## 17 **III. Parties**

18 6. Plaintiff, Daniel David Rigmaiden, pro se, is a  
19 United States citizen currently in federal pretrial detention  
20 facing criminal charges under CR08-814-PHX-DGC in the District  
21 of Arizona. Plaintiff currently resides at Corrections  
22 Corporation of America, Central Arizona Detention Center (CCA-  
23 CADC), 1155 North Pinal Parkway, Florence, AZ 85132.

24 7. The pro se Plaintiff's filings, however inartfully  
25 pleaded, must be liberally construed and held to less  
26 stringent standards than formal pleadings drafted by lawyers.  
27 See Haines v. Kerner, 404 U.S. 519, 520 (1972).

28 8. Defendants, (1) the Federal Bureau of Investigation,

1 (2) the Executive Office for United States Attorneys, (3) the  
2 Office of Information Policy, and (4) the Department of  
3 Justice are all within the Executive Branch of the United  
4 States Government and are agencies within the meaning of 5  
5 U.S.C. § 552(f)(1).

6 **IV. Facts**

7 **A. The Federal Bureau of Investigation FOIA request**  
8 **RE: portable/transportable wireless device**  
9 **locators.**

9 9. On approximately October 10, 2011, Plaintiff mailed  
10 Defendant, the Federal Bureau of Investigation, a FOIA request  
11 seeking records on portable/transportable wireless device  
12 locators (i.e., devices used to locate cell phones, cell site  
13 emulators, etc.) and related equipment manufactured and/or  
14 branded and/or sold by Harris Wireless Products Group (Harris  
15 Corporation) and other manufacturers/companies. See EXHIBIT  
16 01.

17 10. The requested records relate to (1) the Harris  
18 StingRay, StingRay II, KingFish, AmberJack, and other  
19 portable/transportable wireless device locators and related  
20 equipment, (2) the Federal Bureau of Investigation's policies,  
21 practices, and procedures to destroy real-time wireless device  
22 location data obtained by the Harris portable/transportable  
23 wireless device locators and related equipment or obtained by  
24 other portable/transportable wireless device locators, (3) the  
25 Federal Bureau of Investigation's policies, practices, and  
26 procedures to conceal from defendants and their attorneys in  
27 criminal cases the fact that the Federal Bureau of  
28 Investigation used the Harris portable/transportable wireless

1 device locators and related equipment (or other  
2 portable/transportable wireless device locators) to gather  
3 evidence during related criminal investigations, and (4)  
4 agency records constituting user manuals, operations manuals,  
5 and training manuals for the Harris portable/transportable  
6 wireless device locators and related equipment.

7       11. Pursuant to 5 U.S.C. § 552(a)(3)(B), Plaintiff  
8 requested that all digital documents be provided in their  
9 original native form with metadata preserved. See EXHIBIT 01.  
10 Additionally, Plaintiff requested that any redactions be done  
11 on the original digital documents using a digital redaction  
12 process (e.g., using Appligent Redax TM, RapidRedact TM, Adobe  
13 Acrobat TM X Pro, etc.) and provided in their native digitally  
14 redacted form. Plaintiff requested that the native form  
15 digital documents (e.g., emails, etc.) that are redacted by a  
16 computerized redaction process be provided "as is" and that  
17 they not be printed to hard copy and then rescanned to create  
18 an artificial digital form of the documents.

19       12. In his FOIA request letter, Plaintiff requested a  
20 waiver of all fees or reduced fees. See EXHIBIT 01.  
21 Plaintiff explained that disclosure of the requested records  
22 will help members of the public understand the privacy risks  
23 of carrying cell phones and other wireless devices. Plaintiff  
24 further explained that the requested records concern the  
25 direct operations and activities of the government with  
26 respect to surreptitiously locating cell phones and other  
27 wireless devices using Harris brand portable/transportable  
28 wireless device locators and related equipment. Plaintiff

1 also informed the Federal Bureau of Investigation that on  
2 September 22, 2011 The Wall Street Journal published an  
3 article titled "'Stingray' Phone Tracker Fuels Constitutional  
4 Clash" wherein the government's use of portable/transportable  
5 wireless device locators was clearly and sufficiently  
6 identified. See Valentino-DeVries, Jennifer, 'Stingray' Phone  
7 Tracker Fuels Constitutional Clash, The Wall Street Journal,  
8 p. A1 (Sept. 22, 2011) available at  
9 [http://online.wsj.com/article/SB100014240531119041946045765831](http://online.wsj.com/article/SB10001424053111904194604576583112723197574.html)  
10 [12723197574.html](http://online.wsj.com/article/SB10001424053111904194604576583112723197574.html) (last accessed: September 22, 2011). The  
11 noted Wall Street Journal article specifically reported on  
12 Plaintiff's efforts to prove that the government violates the  
13 Fourth Amendment when it uses portable/transportable wireless  
14 device locators to locate wireless devices within home  
15 residences without a proper warrant.

16 13. In his FOIA request letter, Plaintiff requested  
17 expedited processing of his FOIA request. See EXHIBIT 01.  
18 Plaintiff explained that he has a compelling need for the  
19 requested records considering the subject of his request is a  
20 matter of widespread and exceptional media interest and the  
21 government's integrity is called into question when it tracks  
22 and locates wireless devices without proper judicial  
23 authority, i.e., a Rule 41 warrant founded on probable cause.  
24 Plaintiff further explained that the media has repeatedly  
25 reported on warrantless government cell phone tracking prior  
26 to his FOIA request, including articles on the Federal Bureau  
27 of Investigation locating a Verizon Wireless aircard at issue  
28 in Plaintiff's criminal case specifically. See EXHIBIT 01

1 (citing news articles).

2 14. Plaintiff mailed the FOIA request letter via USPS  
3 Certified Return Receipt delivery, article No. 7007 0710 0004  
4 3772 8555. The signature card for the FOIA request was signed  
5 "D.W. Jones / OB" and then mailed back to Plaintiff. See  
6 EXHIBIT 02. The signature date is November 7, 2011.

7 15. On approximately February 15, 2012, Plaintiff mailed  
8 a FOIA appeal letter to the Office of Information Policy  
9 considering no response was received by Plaintiff from the  
10 Federal Bureau of Investigation after having waited more than  
11 three (3) months. See EXHIBIT 03.

12 16. In the appeal letter, Plaintiff appealed (1) the  
13 Federal Bureau of Investigation failing to acknowledge  
14 Plaintiff's FOIA request, (2) the Federal Bureau of  
15 Investigation failing to grant Plaintiff a fee waiver, (3) the  
16 Federal Bureau of Investigation failing to grant Plaintiff  
17 reduced fees, (4) the Federal Bureau of Investigation failing  
18 to provide Plaintiff expedited processing, and (5) the Federal  
19 Bureau of Investigation failing to provide Plaintiff all  
20 requested records.

21 17. In the appeal letter, Plaintiff included a  
22 declaration explaining how he has no commercial interest in  
23 the sought after records. See "Attachment C" of EXHIBIT 03.  
24 Plaintiff's declaration is titled "Daniel Rigmaiden has no  
25 commercial interest in the records requested via FBI FOIA  
26 request, certified return receipt article No. 7007 0710 0004  
27 3772 8555." In his declaration, Plaintiff explained that he  
28 has no commercial interest in the records considering he plans

1 to (1) use the responsive records as evidence in his pending  
2 criminal case (CR08-814-PHX-DGC in the District of Arizona),  
3 (2) freely disseminate the responsive records through the  
4 public record in CR08-814-PHX-DGC, (3) freely disseminate the  
5 responsive records by providing them to his contacts at the  
6 American Civil Liberties Union and Electronic Frontier  
7 Foundation, and (4) freely disseminate the responsive records  
8 by providing them to Jennifer Valentino-DeVries at The Wall  
9 Street Journal. See "Attachment C" of EXHIBIT 03.  
10 Plaintiff's original FOIA request letter explained that The  
11 Wall Street Journal is covering Plaintiff's criminal case with  
12 respect to the Federal Bureau of Investigation's use of  
13 portable/transportable wireless device locators (e.g., the  
14 Harris StingRay). See EXHIBIT 01. See also Valentino-  
15 DeVries, Jennifer, 'Stingray' Phone Tracker Fuels  
16 Constitutional Clash, The Wall Street Journal, p. A1 (Sept.  
17 22, 2011) available at  
18 [http://online.wsj.com/article/SB100014240531119041946045765831](http://online.wsj.com/article/SB10001424053111904194604576583112723197574.html)  
19 [12723197574.html](http://online.wsj.com/article/SB10001424053111904194604576583112723197574.html) (last accessed: September 22, 2011).

20 18. On approximately May 14, 2012, Plaintiff received a  
21 determination of his appeal letter. The Office of Information  
22 Policy assigned Plaintiff Appeal No. AP-2012-01750. See  
23 EXHIBIT 04. Janice Galli McLeod, Associate Director of the  
24 Office of Information Policy, and Anne D. Work, Senior  
25 Counsel, Administrative Appeals Staff, Office of Information  
26 Policy, denied Plaintiff relief based on their determination  
27 that the Federal Bureau of Investigation has no record of  
28 having received Plaintiff's request--despite the signed USPS



1 Certified Return Receipt signature card provided to the Office  
2 of Information Policy via Plaintiff's appeal letter. The  
3 Office of Information Policy closed Plaintiff's appeal.

4 19. The Office of Information Policy indicated in its  
5 letter sent to Plaintiff that it forwarded a copy of  
6 Plaintiff's original FOIA request letter to the Federal Bureau  
7 of Investigation and that it would open a new FOIA request  
8 file.

9 20. Assuming the Office of Information Policy forwarded a  
10 copy of Plaintiff's original FOIA request as indicated, the  
11 Federal Bureau of Investigation once again ignored Plaintiff's  
12 FOIA request. Plaintiff has received no response,  
13 acknowledgement, or records from the Federal Bureau of  
14 Investigation even while Plaintiff's initial FOIA request was  
15 mailed more than eight (8) months prior.

16 **B. The Federal Bureau of Investigation FOIA request**  
17 **RE: Comments made to The Wall Street Journal by**  
18 **the Federal Bureau of Investigation as reported**  
**in a September 22, 2011 article.**

19 21. On approximately November 10, 2011, Plaintiff mailed  
20 Defendant, the Federal Bureau of Investigation, a FOIA request  
21 seeking records on (1) comments made by Federal Bureau of  
22 Investigation agents and employees to The Wall Street Journal  
23 reported in or in relation to the September 22, 2011 The Wall  
24 Street Journal article titled "'Stingray' Phone Tracker Fuels  
25 Constitutional Clash," by Jennifer Valentino-DeVries (see par.  
26 No. 12 above), (2) comments made by Federal Bureau of  
27 Investigation agents and employees at a panel at the Brookings  
28 Institution in May of 2011 regarding portable/transportable

1 wireless device locators (e.g., cell site emulators) such as  
2 the Harris StingRay and KingFish. See EXHIBIT 05.

3       22. The requested records relate to the Federal Bureau of  
4 Investigation's comments made to The Wall Street Journal and  
5 the Brookings Institution relating to (1) Federal Bureau of  
6 Investigation policies and practices to delete/destroy real-  
7 time geolocation data collected/generated using  
8 portable/transportable wireless device locators (e.g., the  
9 Harris StingRay) while locating wireless devices such as cell  
10 phones, (2) Federal Bureau of Investigation policies and  
11 practices to keep the noted real-time geolocation data hidden  
12 from defendant's and their attorneys, (3) Federal Bureau of  
13 Investigation policies and practices to first obtain a warrant  
14 before locating/tracking wireless devices within private  
15 residences, and (4) the Federal Bureau of Investigation's  
16 position that portable/transportable wireless device locators  
17 fall into the "pen register and trap and trace device" legal  
18 category. See EXHIBIT 05.

19       23. Pursuant to 5 U.S.C. § 552(a)(3)(B), Plaintiff  
20 requested that all digital documents be provided in their  
21 original native form with metadata preserved. See EXHIBIT 05.  
22 Additionally, Plaintiff requested that any redactions be done  
23 on the original digital documents using a digital redaction  
24 process (e.g., using Appligent Redax TM, RapidRedact TM, Adobe  
25 Acrobat TM X Pro, etc.) and provided in their native digitally  
26 redacted form. Plaintiff requested that the native form  
27 digital documents (e.g., emails, etc.) that are redacted by a  
28 computerized redaction process be provided "as is" and that

1 they not be printed to hard copy and then rescanned to create  
2 an artificial digital form of the documents.

3       24. In his FOIA request letter, Plaintiff requested a  
4 waiver of all fees or reduced fees. See EXHIBIT 05. Plaintiff  
5 explained that disclosure of the requested records will help  
6 members of the public understand (1) the privacy risks of  
7 carrying cell phones and other wireless devices, and (2) the  
8 Federal Bureau of Investigation policy to destroy discoverable  
9 Brady material (i.e., real-time geolocation data) so that  
10 defendants and their attorneys will be unable to use the  
11 information in a defense. Plaintiff further explained that  
12 the requested records concern the direct operations and  
13 activities of the government with respect to surreptitiously  
14 locating cell phones and other wireless devices using Harris  
15 brand portable/transportable wireless device locators and  
16 related equipment. Plaintiff also informed the Federal Bureau  
17 of Investigation that On September 22, 2011, The Wall Street  
18 Journal published an article titled "'Stingray' Phone Tracker  
19 Fuels Constitutional Clash" wherein the government's use of  
20 portable/transportable wireless device locators was clearly  
21 and sufficiently identified. See Valentino-DeVries, Jennifer,  
22 "'Stingray' Phone Tracker Fuels Constitutional Clash," The  
23 Wall Street Journal, p. A1 (Sept. 22, 2011) available at  
24 [http://online.wsj.com/article/SB100014240531119041946045765831](http://online.wsj.com/article/SB10001424053111904194604576583112723197574.html)  
25 [12723197574.html](http://online.wsj.com/article/SB10001424053111904194604576583112723197574.html) (last accessed: September 22, 2011). The  
26 noted Wall Street Journal article specifically reported on  
27 Plaintiff's challenges to the government's destruction of  
28 real-time geolocation data collected during investigations

1 related to CR08-814-PHX-DGC.

2       25. In his FOIA request letter, Plaintiff requested  
3 expedited processing of his FOIA request. See EXHIBIT 05.  
4 Plaintiff explained that he has a compelling need for the  
5 requested records considering the subject of his request is a  
6 matter of widespread and exceptional media interest and the  
7 government's integrity is called into question when it tracks  
8 and locates wireless devices without proper judicial authority  
9 (i.e., a Rule 41 warrant founded on probable cause) and  
10 destroys the resulting evidence thereafter. Plaintiff further  
11 explained that the media has repeatedly reported on  
12 warrantless government cell phone tracking prior to his FOIA  
13 request, including articles on Plaintiff's criminal case which  
14 specifically report on the government's destruction of real-  
15 time geolocation data. See EXHIBIT 05 (citing news articles).

16       26. In addition to the above explained reasons as to why  
17 expedited processing should be granted, Plaintiff also  
18 explained how he is losing substantial due process rights in  
19 his criminal case, CR08-814-PHX-DGC. See EXHIBIT 05.  
20 Plaintiff explained how FBI Supervisory Special Agent Bradley  
21 S. Morrison's declaration filed in CR08-814-PHX-DGC  
22 contradicts the Federal Bureau of Investigation comments made  
23 to The Wall Street Journal as reported in the article titled  
24 "'Stingray' Phone Tracker Fuels Constitutional Clash."  
25 Plaintiff further explained that he should be granted  
26 expedited processing because he needs to use the responsive  
27 FOIA records to impeach the testimony given by FBI Agent  
28 Morrison via his declaration. See EXHIBIT 05.

1       27. Plaintiff mailed the FOIA request letter via USPS  
2 Certified Return Receipt delivery, article No. 7010 1870 0003  
3 0918 6393. No signature card for the FOIA request was  
4 returned to Plaintiff, however, the USPS website indicates  
5 that the FOIA request was received by the Federal Bureau of  
6 Investigation on January 3, 2012. See EXHIBIT 06.

7       28. On approximately January 30, 2012, Plaintiff received  
8 a letter from the Federal Bureau of Investigation  
9 acknowledging Plaintiff's FOIA request. See EXHIBIT 07. The  
10 Federal Bureau of Investigation assigned Plaintiff "FOIPA  
11 Request No.: 1180900-000" with "Subject: RECORDS CONCERNING  
12 WALL STREET JOURNAL ARTICLE STINGRAY PHONE TRACKER FUELS  
13 CONSTITUTIONAL CLASH."

14       29. On approximately February 3, 2012, Plaintiff received  
15 two letters from the Federal Bureau of Investigation (in one  
16 envelope) denying Plaintiff's request for expedited processing  
17 and denying Plaintiff's request for a fee waiver. See EXHIBIT  
18 08. In the first letter, the Federal Bureau of Investigation  
19 stated that Plaintiff has "not provided enough information  
20 concerning the statutory requirements permitting expedition;  
21 therefore, [][Plaintiff's] request is denied." See *id.* In  
22 the second letter, the Federal Bureau of Investigation stated  
23 that Plaintiff has not satisfied the requirements for a fee  
24 waiver because Plaintiff has "not adequately demonstrated that  
25 the information requested is not in [][Plaintiff's] own  
26 commercial interest." See *id.*

27       30. On approximately February 15, 2012, Plaintiff mailed  
28 a FOIA appeal letter to the Office of Information Policy

1 appealing the Federal Bureau of Investigation's denial of  
2 Plaintiff's request for expedited processing and a fee waiver.  
3 See EXHIBIT 09.

4 31. In the appeal letter, Plaintiff appealed (1) the  
5 Federal Bureau of Investigation failing to grant Plaintiff a  
6 fee waiver, (2) the Federal Bureau of Investigation failing to  
7 grant Plaintiff reduced fees, and (3) the Federal Bureau of  
8 Investigation failing to provide Plaintiff expedited  
9 processing.

10 32. In the appeal letter, Plaintiff included a  
11 declaration explaining how he has no commercial interest in  
12 the sought after records. See "Attachment E" of EXHIBIT 09.  
13 Plaintiff's declaration is titled "Daniel Rigmaiden has no  
14 commercial interest in the records requested via FBI FOIA  
15 request No. 1180900-000." In his declaration, Plaintiff  
16 explained that he has no commercial interest in the records  
17 considering he plans to (1) use the responsive records as  
18 evidence in his pending criminal case (CR08-814-PHX-DGC in the  
19 District of Arizona), (2) freely disseminate the responsive  
20 records through the public record in CR08-814-PHX-DGC, (3)  
21 freely disseminate the responsive records by providing them to  
22 his contacts at the American Civil Liberties Union and  
23 Electronic Frontier Foundation, and (4) freely disseminate the  
24 responsive records by providing them to Jennifer Valentino-  
25 DeVries at The Wall Street Journal. See "Attachment E" of  
26 EXHIBIT 09. Plaintiff's original FOIA request letter  
27 explained that The Wall Street Journal is covering Plaintiff's  
28 criminal case with respect to the Federal Bureau of

1 Investigation's use of portable/transportable wireless device  
2 locators (e.g., the Harris StingRay). See EXHIBIT 05. See  
3 also Valentino-DeVries, Jennifer, 'Stingray' Phone Tracker  
4 Fuels Constitutional Clash, The Wall Street Journal, p. A1  
5 (Sept. 22, 2011) available at  
6 [http://online.wsj.com/article/SB100014240531119041946045765831](http://online.wsj.com/article/SB10001424053111904194604576583112723197574.html)  
7 [12723197574.html](http://online.wsj.com/article/SB10001424053111904194604576583112723197574.html) (last accessed: September 22, 2011).

8 33. In the appeal letter, Plaintiff included a  
9 declaration explaining how he has a need for expedited  
10 processing of his FOIA request. See "Attachment F" of EXHIBIT  
11 09. Plaintiff's declaration is titled "Daniel Rigmaiden has a  
12 need for expedited processing of FBI FOIA request No. 1180900-  
13 000." In his declaration, Plaintiff provided further  
14 information on his original claim that he has a need for  
15 expedited processing considering he is at a loss of  
16 substantial due process rights. Plaintiff explained that he  
17 needs the requested records relating to the Federal Bureau of  
18 Investigation's policies and practices to destroy real-time  
19 data obtained via portable/transportable wireless device  
20 locators so that he can use the records to support his  
21 argument that FBI agents engaged in bad faith destruction of  
22 evidence in CR08-814-PHX-DGC. Plaintiff further explained  
23 that proving bad faith will support his request to have  
24 evidence suppressed based on United States v. Flyer, 633 F.3d  
25 911, 916 (9th Cir. 2011) wherein the Ninth Circuit stated that  
26 secondary evidence can be suppressed for the government's  
27 destruction of evidence. See "Attachment F" of EXHIBIT 09.

28 34. In Plaintiff's declaration explaining how he has a

1 need for expedited processing of his FOIA request, Plaintiff  
2 stated that he needs the requested records prior to his  
3 deadline to file his "Motion To Suppress" in CR08-814-PHX-DGC.  
4 Although the revised filing deadline of June 1, 2012 has  
5 passed in CR08-814-PHX-DGC, Plaintiff is still losing  
6 substantial due process rights considering he is without the  
7 requested records to support his suppression argument based on  
8 the government's bad faith destruction of evidence. See  
9 Flyer, 633 F.3d at 916. Plaintiff has filed his "Motion To  
10 Suppress" in CR08-814-PHX-DGC but the court is yet to rule on  
11 the motion and the court is yet to set a suppression hearing.  
12 The requested records will solidify Plaintiff's suppression  
13 arguments that are mirrored in the above noted declaration.  
14 Compare "Attachment F" of EXHIBIT 09 to Plaintiff's  
15 "Memorandum RE: Destruction Of Evidence," CR08-814-PHX-DGC,  
16 Docket No. 830-2 - linked to "Motion To Suppress," CR08-814-  
17 PHX-DGC, Docket No. 824.

18 35. On approximately April 20, 2012, Plaintiff received a  
19 determination of his appeal letter. The Office of Information  
20 Policy assigned Plaintiff Appeal No. AP-2012-01751. See  
21 EXHIBIT 10. Janice Galli McLeod, Associate Director of the  
22 Office of Information Policy, denied Plaintiff relief for  
23 expedited processing and a fee waiver.

24 36. In her letter, Janice Galli McLeod stated that  
25 Plaintiff is not entitled to expedited processing based on her  
26 determination that Plaintiff has "not demonstrated that the  
27 information sought will aid in any criminal defense, or that  
28 [] [Plaintiff is] facing grave punishment." See EXHIBIT 10.



1 Janice Galli McLeod made this determination knowing that  
2 Plaintiff is facing criminal charges under CR08-814-PHX-DGC  
3 with his superseding indictment on the public record showing  
4 that Plaintiff is being charged with seventy four (74)  
5 felonies. See CR08-814-PHX-DGC, Docket No. 200.

6 37. In her letter, Janice Galli McLeod stated that  
7 Plaintiff is also not entitled to expedited processing based  
8 on her determination that "expedited treatment of []  
9 [Plaintiff's] request is not warranted" because Plaintiff  
10 "failed to sufficiently demonstrate that the subject of []  
11 [his] request is a matter of widespread and exceptional media  
12 interest in which there exist possible questions about the  
13 government's integrity which affect public confidence." See  
14 EXHIBIT 10 (internal quotation marks, brackets, and citation  
15 omitted). Janice Galli McLeod made this determination knowing  
16 that The Wall Street Journal specifically reported on, e.g.,  
17 the Federal Bureau of Investigation's destruction of real-time  
18 data obtained via portable/transportable wireless device  
19 locators in criminal cases. See EXHIBIT 09.

20 38. In her letter, Janice Galli McLeod stated that  
21 Plaintiff is not entitled to a fee waiver based on her  
22 determination that (1) Plaintiff "[[]is] the primary  
23 beneficiary of any release of records that the FBI may  
24 ultimately provide... and thus the public interest requirement  
25 of the FOIA, also referred to as fee waiver factors one  
26 through four, has not been met[,] and (2) Plaintiff "[[]has  
27 not] demonstrated that a significant contribution to the  
28 public's understanding of FBI's operations will occur as a

1 result of a future release to [][Plaintiff], or demonstrated  
2 in any way that [][Plaintiff has] the capacity to disseminate  
3 any such records to the public." See EXHIBIT 10. Janice  
4 Galli McLeod made this determination knowing that (1)  
5 Plaintiff has the ability to disseminate the requested records  
6 through the public record in CR08-814-PHX-DGC, through his  
7 contacts at the American Civil Liberties Union, Electronic  
8 Frontier Foundation, and through The Wall Street Journal; and  
9 (2) The Wall Street Journal specifically reported on the  
10 Federal Bureau of Investigation's destruction of real-time  
11 data obtained using a StingRay in CR08-814-PHX-DGC and based  
12 its story on documents Plaintiff placed on the record in CR08-  
13 814-PHX-DGC. See EXHIBIT 09. See also Valentino-DeVries,  
14 Jennifer, 'Stingray' Phone Tracker Fuels Constitutional Clash,  
15 The Wall Street Journal, p. A1 (Sept. 22, 2011) available at  
16 [http://online.wsj.com/article/SB100014240531119041946045765831](http://online.wsj.com/article/SB10001424053111904194604576583112723197574.html)  
17 [12723197574.html](http://online.wsj.com/article/SB10001424053111904194604576583112723197574.html) (last accessed: September 22, 2011).

18 39. Even though Plaintiff's request for expedited  
19 processing was denied, the Federal Bureau of Investigation has  
20 not provided any records to Plaintiff even while his initial  
21 FOIA request was mailed more than seven (7) months prior.

22 **C. The Executive Office for United States Attorneys**  
23 **FOIA request RE: portable/transportable wireless**  
**device locators.**

24 40. On approximately October 10, 2011, Plaintiff mailed  
25 Defendant, the Executive Office for United States Attorneys, a  
26 FOIA request seeking records on portable/transportable  
27 wireless device locators (i.e., devices used to locate cell  
28 phones, cell site emulators, etc.) and related equipment

1 manufactured and/or branded and/or sold by Harris Wireless  
2 Products Group (Harris Corporation) and other  
3 manufacturers/companies. See EXHIBIT 11.

4 41. The requested records relate to (1) the Harris  
5 StingRay, StingRay II, KingFish, AmberJack, and other  
6 portable/transportable wireless device locators and related  
7 equipment, (2) the Executive Office for United States  
8 Attorneys' policies, practices, and procedures to seek court  
9 orders to destroy real-time wireless device location data  
10 obtained by the Harris portable/transportable wireless device  
11 locators and related equipment or obtained by other  
12 portable/transportable wireless device locators, (3) the  
13 Executive Office for United States Attorneys' policies,  
14 practices, and procedures to have Assistant United States  
15 Attorneys and other attorneys seek one or more court orders  
16 authorizing use of pen registers, trap and trace devices,  
17 stored records under the Stored Communications Act, and/or  
18 mobile tracking devices—while the true intention is to use  
19 Harris portable/transportable wireless device locators and  
20 related equipment or other portable/transportable wireless  
21 device locators, and (4) the Executive Office for United  
22 States Attorneys' policies, practices, and procedures to  
23 conceal from defendants and their attorneys in criminal cases  
24 the fact that the government used the Harris  
25 portable/transportable wireless device locators and related  
26 equipment (or other portable/transportable wireless device  
27 locators) to gather evidence during related criminal  
28 investigations.

1       42. Pursuant to 5 U.S.C. § 552(a)(3)(B), Plaintiff  
2 requested that all digital documents be provided in their  
3 original native form with metadata preserved. See EXHIBIT 11.  
4 Additionally, Plaintiff requested that any redactions be done  
5 on the original digital documents using a digital redaction  
6 process (e.g., using Appligent Redax TM, RapidRedact TM, Adobe  
7 Acrobat TM X Pro, etc.) and provided in their native digitally  
8 redacted form. Plaintiff requested that the native form  
9 digital documents (e.g., emails, etc.) that are redacted by a  
10 computerized redaction process be provided "as is" and that  
11 they not be printed to hard copy and then rescanned to create  
12 an artificial digital form of the documents.

13       43. In his FOIA request letter, Plaintiff requested a  
14 waiver of all fees or reduced fees. See EXHIBIT 11.  
15 Plaintiff explained that disclosure of the requested records  
16 will help members of the public understand the privacy risks  
17 of carrying cell phones and other wireless devices. Plaintiff  
18 further explained that the requested records concern the  
19 direct operations and activities of the government with  
20 respect to surreptitiously locating cell phones and other  
21 wireless devices using Harris brand portable/transportable  
22 wireless device locators and related equipment. Plaintiff  
23 also informed the Executive Office for United States Attorneys  
24 that on September 22, 2011 The Wall Street Journal published  
25 an article titled "'Stingray' Phone Tracker Fuels  
26 Constitutional Clash" wherein the government's use of  
27 portable/transportable wireless device locators was clearly  
28 and sufficiently identified. See Valentino-DeVries, Jennifer,

1 'Stingray' Phone Tracker Fuels Constitutional Clash, The Wall  
2 Street Journal, p. A1 (Sept. 22, 2011) available at  
3 [http://online.wsj.com/article/SB100014240531119041946045765831](http://online.wsj.com/article/SB10001424053111904194604576583112723197574.html)  
4 [12723197574.html](http://online.wsj.com/article/SB10001424053111904194604576583112723197574.html) (last accessed: September 22, 2011). The  
5 noted Wall Street Journal article specifically reported on  
6 Plaintiff's efforts to prove that the government violates the  
7 Fourth Amendment when it uses portable/transportable wireless  
8 device locators to locate wireless devices within home  
9 residences without a proper warrant.

10 44. In his FOIA request letter, Plaintiff requested  
11 expedited processing of his FOIA request. See EXHIBIT 11.  
12 Plaintiff explained that he has a compelling need for the  
13 requested records considering the subject of his request is a  
14 matter of widespread and exceptional media interest and the  
15 government's integrity is called into question when it tracks  
16 and locates wireless devices without proper judicial  
17 authority, i.e., a Rule 41 warrant founded on probable cause.  
18 Plaintiff further explained that the media has repeatedly  
19 reported on warrantless government cell phone tracking prior  
20 to his FOIA request, including articles on the Federal Bureau  
21 of Investigation locating a Verizon Wireless aircard at issue  
22 in Plaintiff's criminal case specifically. See EXHIBIT 11  
23 (citing news articles).

24 45. Plaintiff mailed the FOIA request letter via USPS  
25 Certified Return Receipt delivery, article No. 7009 2250 0003  
26 8907 7508. The signature card for the FOIA request was mailed  
27 back to Plaintiff but it contained no signature or date. See  
28 EXHIBIT 12. However, the USPS website indicates that the FOIA

1 request was received by the Executive Office for United States  
2 Attorneys on November 7, 2011. See EXHIBIT 13.

3 46. On approximately February 15, 2012, Plaintiff mailed  
4 a FOIA appeal letter to the Office of Information Policy  
5 considering no response was received by Plaintiff from the  
6 Executive Office for United States Attorneys after having  
7 waited more than four (4) months. See EXHIBIT 14.

8 47. In the appeal letter, Plaintiff appealed (1) the  
9 Executive Office for United States Attorneys failing to  
10 acknowledge Plaintiff's FOIA request, (2) the Executive Office  
11 for United States Attorneys failing to grant Plaintiff a fee  
12 waiver, (3) the Executive Office for United States Attorneys  
13 failing to grant Plaintiff reduced fees, (4) the Executive  
14 Office for United States Attorneys failing to provide  
15 Plaintiff expedited processing, and (5) the Executive Office  
16 for United States Attorneys failing to provide Plaintiff all  
17 requested records.

18 48. In the appeal letter, Plaintiff included a  
19 declaration explaining how he has no commercial interest in  
20 the sought after records. See "Attachment C" of EXHIBIT 14.  
21 Plaintiff's declaration is titled "Daniel Rigmaiden has no  
22 commercial interest in the records requested via EOUSA FOIA  
23 request, certified return receipt article No. 7009 2250 0003  
24 8907 7508." In his declaration, Plaintiff explained that he  
25 has no commercial interest in the records considering he plans  
26 to (1) use the responsive records as evidence in his pending  
27 criminal case (CR08-814-PHX-DGC in the District of Arizona),  
28 (2) freely disseminate the responsive records through the

1 public record in CR08-814-PHX-DGC, (3) freely disseminate the  
2 responsive records by providing them to his contacts at the  
3 American Civil Liberties Union and Electronic Frontier  
4 Foundation, and (4) freely disseminate the responsive records  
5 by providing them to Jennifer Valentino-DeVries at The Wall  
6 Street Journal. See "Attachment C" of EXHIBIT 14. Plaintiff's  
7 original FOIA request letter explained that The Wall Street  
8 Journal is covering Plaintiff's criminal case with respect to  
9 the Federal Bureau of Investigation's use of  
10 portable/transportable wireless device locators (e.g., the  
11 Harris StingRay). See EXHIBIT 11. See also Valentino-  
12 DeVries, Jennifer, 'Stingray' Phone Tracker Fuels  
13 Constitutional Clash, The Wall Street Journal, p. A1 (Sept.  
14 22, 2011) available at  
15 [http://online.wsj.com/article/SB100014240531119041946045765831](http://online.wsj.com/article/SB10001424053111904194604576583112723197574.html)  
16 [12723197574.html](http://online.wsj.com/article/SB10001424053111904194604576583112723197574.html) (last accessed: September 22, 2011).

17 49. On approximately May 14, 2012, Plaintiff received a  
18 determination of his appeal letter. The Office of Information  
19 Policy assigned Plaintiff Appeal No. AP-2012-01749. See  
20 EXHIBIT 15. Janice Galli McLeod, Associate Director of the  
21 Office of Information Policy, denied Plaintiff relief based on  
22 their determination that "no adverse determination has yet  
23 been made by EOUSA, there is no action for this Office to  
24 consider on appeal." See *id.*

25 50. Even though Plaintiff's entire appeal was denied, the  
26 Executive Office for United States Attorneys has not provided  
27 any records to Plaintiff even while his initial FOIA request  
28 was mailed more than eight (8) months prior.

1       **V. Cause of Action**

2       51. Plaintiff re-alleges and incorporates by reference  
3 into this section paragraphs No. 1-50 listed above.

4               **A. Claims RE: the Federal Bureau of Investigation**  
5               **FOIA request RE: portable/transportable wireless**  
6               **device locators.**

7       52. Defendants, Federal Bureau of Investigation and  
8 Department of Justice, failing to acknowledge Plaintiff's FOIA  
9 request RE "portable/transportable wireless device locators,"  
10 even while eight (8) months have passed since the request was  
11 mailed, violates the FOIA, 5 U.S.C. § 552(a)(6)(A)(i), and  
12 Defendant's corresponding regulations.

13       53. Defendants, Federal Bureau of Investigation, Office  
14 of Information Policy, and Department of Justice, failing to  
15 grant expedited processing for Plaintiff's FOIA request RE  
16 "portable/transportable wireless device locators" violates the  
17 FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendants' corresponding  
18 regulations.

19       54. Defendants, Federal Bureau of Investigation, Office  
20 of Information Policy, and Department of Justice, failing to  
21 grant a waiver of fees for Plaintiff's FOIA request RE  
22 "portable/transportable wireless device locators" violates the  
23 FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and Defendants'  
24 corresponding regulations.

25       55. Defendants, Federal Bureau of Investigation, Office  
26 of Information Policy, and Department of Justice, failing to  
27 grant a limitation of fees for Plaintiff's FOIA request RE  
28 "portable/transportable wireless device locators" violates the  
FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and Defendants'



1 corresponding regulations.

2 56. Defendants, Federal Bureau of Investigation and  
3 Department of Justice, failing to promptly provide Plaintiff  
4 with records requested via his FOIA request RE  
5 "portable/transportable wireless device locators," even while  
6 eight (8) months have passed since the request was mailed,  
7 violates the FOIA, 5 U.S.C. § 552(a)(3)(A), and Defendants'  
8 corresponding regulations.

9 **B. Claims RE: the Federal Bureau of Investigation**  
10 **FOIA request RE: Comments made to The Wall**  
11 **Street Journal by the Federal Bureau of**  
**Investigation as reported in a September 22,**  
**2011 article.**

12 57. Defendants, Federal Bureau of Investigation and  
13 Department of Justice, failing to acknowledge Plaintiff's FOIA  
14 request RE "comments made to The Wall Street Journal by the  
15 Federal Bureau of Investigation as reported in a September 22,  
16 2011 article," even while seven (7) months have passed since  
17 the request was mailed, violates the FOIA, 5 U.S.C. § 552(a)  
18 (6)(A)(i), and Defendant's corresponding regulations.

19 58. Defendants, Federal Bureau of Investigation, Office  
20 of Information Policy, and Department of Justice, failing to  
21 grant expedited processing for Plaintiff's FOIA request RE  
22 "comments made to The Wall Street Journal by the Federal  
23 Bureau of Investigation as reported in a September 22, 2011  
24 article" violates the FOIA, 5 U.S.C. § 552(a)(6)(E), and  
25 Defendants' corresponding regulations.

26 59. Defendants, Federal Bureau of Investigation, Office  
27 of Information Policy, and Department of Justice, failing to  
28 grant a waiver of fees for Plaintiff's FOIA request RE

1 "comments made to The Wall Street Journal by the Federal  
2 Bureau of Investigation as reported in a September 22, 2011  
3 article" violates the FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and  
4 Defendants' corresponding regulations.

5 60. Defendants, Federal Bureau of Investigation, Office  
6 of Information Policy, and Department of Justice, failing to  
7 grant a limitation of fees for Plaintiff's FOIA request RE  
8 "comments made to The Wall Street Journal by the Federal  
9 Bureau of Investigation as reported in a September 22, 2011  
10 article" violates the FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and  
11 Defendants' corresponding regulations.

12 61. Defendants, Federal Bureau of Investigation and  
13 Department of Justice, failing to promptly provide Plaintiff  
14 with records requested via his FOIA request RE "comments made  
15 to The Wall Street Journal by the Federal Bureau of  
16 Investigation as reported in a September 22, 2011 article,"  
17 even while seven (7) months have passed since the request was  
18 mailed, violates the FOIA, 5 U.S.C. § 552(a)(3)(A), and  
19 Defendants' corresponding regulations.

20 **C. Claims RE: the Executive Office for United**  
21 **States Attorneys FOIA request RE:**  
22 **portable/transportable wireless device locators.**

23 62. Defendants, Executive Office for United States  
24 Attorneys and Department of Justice, failing to acknowledge  
25 Plaintiff's FOIA request RE "portable/transportable wireless  
26 device locators," even while eight (8) months have passed  
27 since the request was mailed, violates the FOIA, 5 U.S.C. §  
28 552(a)(6)(A)(i), and Defendant's corresponding regulations.

63. Defendants, Executive Office for United States

1 Attorneys, Office of Information Policy, and Department of  
2 Justice, failing to grant expedited processing for Plaintiff's  
3 FOIA request RE "portable/transportable wireless device  
4 locators" violates the FOIA, 5 U.S.C. § 552(a)(6)(E), and  
5 Defendants' corresponding regulations.

6 64. Defendants, Executive Office for United States  
7 Attorneys, Office of Information Policy, and Department of  
8 Justice, failing to grant a waiver of fees for Plaintiff's  
9 FOIA request RE "portable/transportable wireless device  
10 locators" violates the FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and  
11 Defendants' corresponding regulations.

12 65. Defendants, Executive Office for United States  
13 Attorneys, Office of Information Policy, and Department of  
14 Justice, failing to grant a limitation of fees for Plaintiff's  
15 FOIA request RE "portable/transportable wireless device  
16 locators" violates the FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and  
17 Defendants' corresponding regulations.

18 66. Defendants, Executive Office for United States  
19 Attorneys and Department of Justice, failing to promptly  
20 provide Plaintiff with records requested via his FOIA request  
21 RE "portable/transportable wireless device locators," even  
22 while eight (8) months have passed since the request was  
23 mailed, violates the FOIA, 5 U.S.C. § 552(a)(3)(A), and  
24 Defendants' corresponding regulations.

25 **VI. Requested Relief**

26 WHEREFORE, Plaintiff requests that this Court:

27 67. Order Defendants immediately to process and provide  
28 all outstanding requested records;

1       68. Order Defendants to (1) provide the requested records  
2 as native form digital documents (e.g., emails, etc.) with  
3 metadata preserved, (2) conduct any redactions by using a  
4 computerized redaction process that preserves original  
5 metadata, and (3) provide the requested documents "as is,"  
6 i.e., not printed to hard copy and then rescanned to create an  
7 artificial digital form of any document;

8       69. Enjoin Defendants from charging Plaintiff fees for  
9 the processing of his requests;

10       70. Issue a declaration that Plaintiff is suffering a  
11 loss of substantial due process rights under FOIA as a result  
12 of not having the records requested via his FOIA request RE:  
13 "comments made to The Wall Street Journal by the Federal  
14 Bureau of Investigation as reported in a September 22, 2011  
15 article";

16       71. Issue a declaration that Plaintiff is sufficiently  
17 capable of disseminating records under FOIA relating to  
18 government tracking/locating of wireless devices such as cell  
19 phones and aircards;

20       72. Award Plaintiff his costs and reasonable fees for his  
21 pro se time in this action;

22       73. Award Plaintiff reasonable attorneys' fees incurred  
23 in this action; and

24       74. Grant such other relief as the Court may deem just  
25 and proper.

26 ///

27 ///

28 ///

Respectfully Submitted: ~~XXXX~~ July 19, 2012

DANIEL DAVID RIGMAIDEN,  
Pro Se Plaintiff:

Daniel Rigmaiden  
Daniel D. Rigmaiden  
Agency # 10966111  
CCA-CADC  
PO Box 6300  
Florence, AZ 85132  
Telephone: none

**VERIFICATION**

I have read the foregoing complaint and hereby verify that the matters alleged therein are true, except as to matters alleged on information and belief, and, as to those, I believe them to be true. I certify under penalty of perjury that the foregoing is true and correct.

Executed in Florence, Arizona, on July 1, 2012.

Daniel Rigmaiden  
Daniel D. Rigmaiden